

# SENATE BILL REPORT

## SB 5353

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As of February 4, 2008

**Title:** An act relating to courts of limited jurisdiction.

**Brief Description:** Changing provisions concerning municipal courts.

**Sponsors:** Senators Kline, McCaslin, Swecker and Pridemore.

**Brief History:**

**Committee Activity:** Judiciary: 1/19/07, 2/23/07 [DPS, DNP, w/oRec].

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Robert Kay (786-7405)

**Background:** Cities and towns have exclusive original jurisdiction over the prosecution and adjudication of all misdemeanor offenses and traffic infractions committed by adults, and over misdemeanor traffic offenses and traffic infractions committed by juveniles over 16 years of age, and over the resultant sentencing, imposition of fines and other civil penalties, where the offenses or infractions arise from a violation of a city/town ordinance, are committed within the jurisdiction and are referred by a law enforcement agency acting under the authority of law in that jurisdiction.

Counties, cities, and towns are responsible for, the prosecution, adjudication and sentencing of all misdemeanor offenses committed by adults, and any resultant sentencing. Counties, cities, and towns are also responsible for the prosecution and adjudication of misdemeanor traffic offenses committed by juveniles over 16 years of age, and over the resultant sentencing, imposition of fines and other civil penalties. Counties, cities, and towns are responsible for these matters where the offenses or infractions are committed within their respective jurisdictions and are referred by a law enforcement agency acting under the authority of law in that jurisdiction, whether the matter arises under state law or city/town ordinance.

Municipal courts may exercise jurisdiction over the issuance and enforcement of civil anti-harassment orders under RCW 10.14, but are not expressly required to exercise this jurisdiction.

RCW 39.34.180 presently expressly authorizes a city or town that is not operating its own municipal court to enter into an agreement with the district court in the county of the city/town for the district court to operate as the municipal court of the city/town, providing municipal court services. However, no statute currently expressly authorizes a city that is not operating

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its own municipal court to enter into an interlocal agreement with another city for municipal court services. In May 2007 the Washington Supreme Court determined in *City of Medina v. Primm* that a city not operating its own municipal court is impliedly authorized under present statutory law to enter into an interlocal agreement with another city for municipal court services.

Currently a municipal court judge must be elected where the judge is compensated for 35 or more hours a week. It is discretionary with city councils, in cities where the judge works fewer hours, whether the position is filled by election or appointment. In a substantial majority of cities with independent municipal courts, the judge is appointed to a four-year term of office.

**Summary of Bill:** The bill as referred to committee was not considered.

**SUMMARY OF BILL (Proposed Second Substitute):** The court structure for cities and towns with a population of four hundred thousand or less which choose to operate under RCW chapter 3.50 is changed. Each county, city, and town is responsible for the prosecution and adjudication of misdemeanor and gross misdemeanor offenses and traffic infractions committed by adults and juveniles over the age of 16 pursuant to RCW 13.04.030(1)(e)(iii) in their respective jurisdictions and referred by any law enforcement agency acting under authority of law in those jurisdictions, and are responsible for any resultant sentencing, incarceration, and imposition of fines or other civil penalty, whether the infraction arises under state law or city/town ordinance. Each county, city, or town must carry out these responsibilities either by establishing its own courts, or by entering into interlocal agreements to provide the court services.

Cities and towns are expressly authorized to enter into interlocal agreements with a hosting jurisdiction for the provision of municipal court services. Hosting jurisdictions can be either the county in which the contracting city/town is located, or another city or town within a reasonable distance from the contracting city or town and within the same county.

The hosting jurisdiction's court, acting as the municipal court for the contracting city or town, must exercise exclusive original jurisdiction over traffic infractions, and misdemeanor and gross misdemeanor criminal offenses arising under the ordinances of the contracting city or town.

A city or town operating its own municipal court cannot terminate that court, or terminate an interlocal agreement with a hosting county or another city or town unless the city or town terminating the court has reached an agreement with the county or another city or town to pay for the costs of the traffic and misdemeanor cases that will no longer be heard in the terminated court. A city or town also cannot repeal its municipal criminal code or the part of its criminal code dealing with criminal traffic offenses without making the same arrangements to pay for the costs of these cases in another court. Such agreements must provide for periodic review and renewal, and if the contracting city/town and the hosting jurisdiction fail to agree on terms of a renewed agreement the parties must submit the agreement negotiations to arbitration under RCW 7.04A.

Municipal courts must have jurisdiction to issue civil anti-harassment protection orders.

Full-time municipal court judges must be elected and part-time judges may be elected or appointed. If the part-time judges are appointed, the city or town must pass an ordinance establishing the process of creating, selecting, and convening a commission to nominate candidates for part-time judicial positions.

The effective date is 90 days after adjournment of session in which the bill is passed.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE: (Proposed Second Substitute):** The court structure for cities and towns with a population of 400,000 or less which choose to operate under RCW chapter 3.50 is changed from that proposed in the substitute bill last session. The responsibilities that each county, city, and town presently have pursuant to RCW 13.04.030(1)(e)(iii) for the prosecution and adjudication of certain misdemeanor and gross misdemeanor offenses and traffic infractions committed by juveniles over the age of 16, whether the infraction arises under state law or city/town ordinance, and for any resultant sentencing, incarceration, imposition of fines or other civil penalty, is made express. Each county, city, or town must carry out this responsibility and its responsibilities regarding criminal offenses and traffic infractions committed by adults either by establishing its own courts, or by entering into interlocal agreements to provide the court services. The county, city, or town is responsible for these matters where the offense or infraction occurs within the respective jurisdiction and is referred by any law enforcement agency acting under authority of law in that jurisdiction.

Full-time municipal court judges must be elected and part-time judges may be elected or appointed. If the part-time judges are appointed, the city or town must pass an ordinance establishing the process of creating, selecting, and convening a commission to nominate candidates for part-time judicial positions. Terms of office of full- and part-time judges must be governed by pre-existing law in RCW 3.50.

Due to the holding of the Washington Supreme Court in *City of Medina v. Primm* that under pre-existing statutory law cities and towns may contract with other cities or towns for municipal court services there is no longer any need for an emergency clause, and the recommended substitute will take effect 90 days after adjournment of session in which the bill is passed.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended First Substitute):** The Legislature finds that the authority of cities to contract with counties and other cities for judicial services is pre-existing. Language requiring the invitation of presiding judges from the host jurisdiction and any contracting cities to participate in interlocal agreement negotiations is removed. Language requiring municipal court jurisdiction over issuance of protection orders, other than anti-harassment protection orders, is removed.

Language requiring election of municipal court judges is removed. Cities that appoint part-time judges must utilize a standardized appointment procedure. This procedure involves creation by ordinance of a judicial nominating commission, that consists of various attorneys, local officials, citizens, and staff; some of whom are appointed by stakeholder groups. The commission evaluates applicants based on various criteria and submits a ranked list of applicants for the mayor or appointing authority to select, subject to confirmation by the local city council or legislative body. Once appointed, the judge serves for two years before having to participate in an uncontested retention election. To remain in office, the judge must garner

more than 50 percent of the vote that answers "yes" to the question of whether the judge should remain in office for four years.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Judiciary):** PRO: All judicial officers should be elected. The issue is not how a municipal court judge is initially selected, but how that judge is retained. The judge may feel pressured to decide cases in certain ways if his or her retention is left in the hands of the local executive and legislative branches. This issue implicates separation of powers. No practical reason exists to not elect judges. The costs associated with a judicial campaign are commensurate with the size of the town. If no one files for candidacy, the judge could be appointed for the full four-year term. It is important to mandate municipal court jurisdiction over protection orders so that the most vulnerable citizens will have protection. Many small cities are not taking advantage of the opportunity to issue protection orders. It is important for citizens seeking protection to be able to access a forum that is not half a county away. A domestic violence victim could be left with no funds, yet must take care of young children; accessibility is important.

CON: Requiring election of all municipal court judges would result in some courts going out of business. The pool of willing and eligible candidates would be minimized. People running for these positions wouldn't want to go through the burdens associated with the election process, such as filing financial statements. Under these circumstances, a judge having no experience could file for candidacy at the last minute and win without opposition. The municipal judges we have now are honest, hard-working judges with decades of experience. The system we have works the way it is now; the proposed fix would be worse. Requiring mandatory jurisdiction over protective orders is the equivalent of an unfunded mandate. There are many small courts in this state; some are in session two days per month, yet are run in an efficient manner that safeguards everyone's rights. If a part-time judge must be available everyday to issue protective orders, this would result in tremendous costs to that judge's city. The city would have to re-negotiate compensation with the judge. Cities would lose many judges who must schedule their judicial service around private practice. These judges are not in service to make money; they are there for the good of the community. If this bill is passed, a number of judges would not run.

OTHER: The contracting provisions of the bill clarify the pre-existing contracting authority of cities. The provisions also allow for efficiency by improved access of court services, while keeping costs down for citizens. However, expanding municipal court jurisdiction to include protection orders would be an unfunded mandate. Also, under this bill, it would be possible for a municipal court to issue an order that conflicts with an order issued by a superior court, for example. Requiring election for municipal judges compromises judicial independence because candidates are obligated to make campaign promises. Also, citizens, and even lawyers, often aren't familiar with judicial candidates, and therefore don't know who to vote for. Smaller jurisdictions would have difficulty finding good judicial candidates. The key to

promoting judicial independence is to create standards for the selection and appointment of judges. It is possible to improve access to justice without burdensome election requirements. The federal system of judicial appointment works.

The provision requiring mandatory municipal jurisdiction over anti-harassment and protective orders seems to only apply to contracting courts. It also seems that those courts with limited hours need only hear cases concerning protective orders and the like when open. Filing fees associated with civil anti-harassment orders could be a potential source of revenue for local courts. Election of judges is important. Requiring election would not prevent good qualified judicial candidates from seeking office. We should be hesitant with any change that would create an additional layer of courts; we already have reliable regional court system, the district court system. We should address problems within the system rather than creating an additional layer. For instance, the master plan for the King County District Court essentially states that it will come to the municipalities, and be the preferred court of limited jurisdiction. Also, we would like to see a phase-out of eligibility for lay candidates for judicial positions.

**Persons Testifying:** PRO: Senator Kline, prime sponsor; Judge Marilyn Paja, District and Municipal Court Judges Association, Board for Judicial Administration; Jeff Hall, Board for Judicial Administration; Dave Johnson, Washington Coalition of Crime Victim Advocates.

CON: Judge Paul Conroy, Aberdeen Municipal Court.

OTHER: Mary Alyce Burleigh, City of Kirkland Council, Association of Washington Cities; Mike Doubleday, Cities of Bellevue and Newcastle; Doug Levy, Cities of Everett, Kent, Federal Way, Renton, and Puyallup; John Wise, Mayor of Enumclaw; Judge Barbara Linde, King County District Court.